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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,699	04/21/2006	Heinz Lohrer	850-219-2	7202

4955 7590 01/07/2009

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EXAMINER

HAWTHORNE, OPHELIA ALTHEA

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

01/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,699

Applicant(s)

LOHRER, HEINZ

Examiner

OPHELIA HAWTHORNE

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 21 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

This action is in response to amendment/arguments filed on 04/10/2008. Currently, claim 12 is pending in the instant application.

Response to Arguments

Applicant's arguments with respect to claim 12 have been considered but are moot in view of the new ground(s) of rejection.

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed on 04/21/2006.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Levick, Jr. (GB 286132 A)** in view of **Beals (US 3,624,686)** and further in view of **Figley (US 6,602,213 B1)**.

Regarding claim 12, Levick, Jr. substantially discloses an elastic bandage or strap (**Fig. 1**) for holding an orthopedic or orthotic element (i.e., pad) adjacent an injured or injury-prone foot, comprising an elastic sleeve or tube (**Page 1[lines 17 – 19]** sized and shaped to fit over a foot, the elastic sleeve or tube including a sole region positioned adjacent the sole of the foot (**Page 1 [lines 24 – 26]** when the bandage or strap is fitted thereon (**as shown in Fig. 1**); and a holder or a pocket on the inside of the strap or bandage adapted to removably receive one or more flexible pads (**16, Fig. 4**).

Levick, Jr. substantially described the invention as claimed; except for a holder in the form of hook and loop fastener area provided on the inside of the sleeve or tube and extending over the entire sole region; whereby an orthopedic or orthotic element provided with a complementary hook and loop fastening area can be detachably fastened to the holder at any desired position on the sole region.

However, Beals teaches a clothing assembly of a clothing garment (**an apron 10, as shown in Fig. 1**) with colored pockets (**13, Fig. 1**) that are removable with hook and loop strips (**12 and 17, Figs. 1 – 5**) & ([Col. 2], lines 7 – 51). At the time of the

invention, it would have been an obvious matter of design to choice to provide a holder or a pocket having hook and loop. The provision of a holder in the form of hook and loop instead of being stitched as shown by Levick, Jr. does not provide any unobvious result , and therefore, is not patentable over prior art.

Levick, Jr. and Krugler substantially described the invention as claimed; except for an orthopedic or orthotic element provided with a complementary hook and loop fastening area can be detachably fastened to the holder at any desired position on the sole region.

However, Figley teaches a disposable splint comprising an instant cold pack **(10)** attached to the brace **(3)** through VELCRO (hook and loop) connection **([Col. 3], lines 34 – 37)**. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Levick, Jr. and Krugler to have a a complementary hook and loop fastening area can be detachably fastened to the holder at any desired position on the sole region taught by Figley for removably inserting the an orthopedic element.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OPHELIA HAWTHORNE whose telephone number is (571)270-3860. The examiner can normally be reached on Monday - Friday, 7:30 AM - 5:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ophelia Hawthorne/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772